

## **REMARKS**

Claims 1, 21, and 22 were pending in the application and were rejected. Applicant respectfully requests reconsideration.

### **CLAIM REJECTIONS UNDER 35 USC §103**

The Office Action rejected claims 1, 21, and 22 under 35 USC 103(a), as being unpatentable over Varma (US 6643322 B1) in view of Mahany (US 5,862,171) and Admitted Prior Art (APA). Claim 1 is not unpatentable over the cited references. The Office Action relies on APA to teach the requirement of “three or more but less than ten transmissions” because it concedes that Varma does not teach this requirement. Applicant respectfully disagrees. APA discloses switching between two transmission rates “after two consecutive transmission errors and back to the high rate either after ten successful transmissions or after a time out.” APA does not teach adapting a rate to a current link quality as required by claim 1.

See APA “[0006] Although IEEE 802.11 WLANs are becoming more and more popular, little has been published about the rate adaptation techniques that could be applied to those networks. A. Kamerman and L. Montean describe in “WaveLAN-II: A High-Performance Wireless LAN for the Unlicensed Band”, Bell Labs Technical Journal, Summer 1997, pp. 118-133, a method used in Lucent's WaveLAN-II devices. It is basically an automatic method for switching between two transmission rates, with the high one as the default operating rate. The device switches automatically to the low rate after two consecutive transmission errors and back to the high rate either after ten successful transmissions or after a time out.”

The Office Action admits that Varma “does not explicitly teach selecting an adapted data transmission rate by selecting a new packet length different from an original packet length being used” but argues that Mahany provides this requirement. In this and the previous Office Action, the Examiner relies on Mahany’s brief mention of modifying data packet sizes in the Abstract at lines 19-21. Mahany also mentions data packet sizes at Col. 2, lines 58-62 : “It is a further object of the invention to provide an adaptive RF data communication system which maintains communication based on a set of operating parameters for optimizing communication, wherein the operating parameters involve: 1) the size of data segments to be transmitted;...”

There is no teaching in Mahany to support “selecting an adapted data transmission rate by selecting a new packet length different from an original packet length being used” wherein the transmission rate is selected based on link quality; therefore Mahany cannot be relied upon to provide this teaching. “A prior patent must be considered in its entirety, i.e., as a whole, including portions that would lead away from the invention in suit.” *W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851 (1984).

Therefore claim 1 is not unpatentable over the cited references for the reasons as stated above.

Claims 21 and 22 have been amended to track the language of claim 1; therefore they are also patentable over the cited references.

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims. The Director is hereby authorized to charge any fees which may be required, including any petition for extension of time fees under §1.17, or credit any overpayment, to Deposit Account Number 50-0510.

Respectfully submitted,

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